

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 9577 of 2020

With

R/SPECIAL CIVIL APPLICATION NO. 10101 of 2020

With

R/SPECIAL CIVIL APPLICATION NO. 10367 of 2020

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**M/S SCREENOTEX ENGINEERS PVT LTD THROUGH ITS DIRECTOR
HEMANTKUMAR MANEKLAL PATEL**

Versus

COMMISSIONER OF CGST

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Appearance:

MR D K TRIVEDI(5283) for the Petitioner(s) No. 1,2

MR PY DIVYESHVAR(2482) for the Respondent(s) No. 2,3,5

PRIYANK P LODHA(7852) for the Respondent(s) No. 1,4

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CORAM:HONOURABLE MR. JUSTICE J.B.PARDIWALA

and

HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 30/03/2022

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

1. Since the issues raised in all the captioned writ applications are the same, those were taken up for hearing analogously and are being disposed of by this common order. For the sake of convenience, the Special Civil Application No.10367 of 2020 is treated as the lead matter.

2. By this writ application under Article 226 of the Constitution of India, the writ applicants have prayed for the following reliefs:

"A. Your Lordships may be pleased to admit this petition;

B. Your Lordships may be pleased to allow this petition;

C. Your Lordships may be pleased to issue writ of mandamus

or any other appropriate writ directing the respondent authorities to allow amendment in GSTR-1 return of Petitioner No.1 herein pertaining to the month of June 2019 so that 'Deemed Export' could be tick mark (✓) in regard to Invoice No.122 dtd. 22/06/2019 and 125 dtd. 25/06/2019 respectively;

D. Your Lordships may be pleased to grant an ex-parte, ad interim order in favour of the petitioner herein in terms of prayer clause 'C' hereinabove;

E. Your Lordships may be pleased to grant such other and further relief(s) that may be deemed fit and proper in the interest of justice in favour of the Petitioner."

3. The facts giving rise to this writ application may be summarized as under:

3.1 The writ applicant No.1 is engaged in the manufacture and export of textile capital machinery. Both the writ applicants are registered with the Goods and Service Tax Department and hold a GSTN Number. It is the case of the writ applicant no.1 that it had supplied a textile capital machine to the writ applicant No.2. The details of the invoice under which the said machine was supplied to the writ applicant No.2 is tabulated below:

Invoice No.	Invoice Date	Basic Value (Rs)	CGST (Rs)	SGST (Rs)	Total Value (Rs)
122	22/06/19	24,76,237.50	2,22,861.38	2,22,861.38	29,21,960.00
125	25/06/19	20,26,012.50	1,82,341.13	1,82,341.13	23,90,695.00
TOTAL		45,02,250.00	4,05,202.51	4,05,202.51	53,12,655.00

3.2 The aforesaid supplies are 'Deemed Export' in accordance with Section 147 of the CGST Act read with Rule 89(2)(g) of the CGST Rules read with the Notification No.47/2017 dated 18.10.2017, Notification No.48/2017 dated 18.10.2017 and the Notification No.49/2017 dated 18.10.2017 and also as per the Director General Foreign Trade Policy 2015-20, Chapter – 7 (Deemed Export). It is the case of the

writ applicant No.1 that although, the aforesaid supplies are 'Deemed Export' yet, while filing the return in the Form GSTR-1 on the portal of the Goods and Service Tax Department for the month of June 2019, inadvertently, the GST Consultant of the writ applicant No.1 missed to tick mark on the column of 'Deemed Export' in the said return in regard to the aforesaid invoices.

3.3 Having realized its mistake, the writ applicant No.1 tried to rectify the same by amending the Form GSTR – 1. It appears that the request to amend was initially granted and out of nine bills, the writ applicant No.1 was in a position to amend four bills. The dispute between parties arose at this stage.

3.4 It is the case of the respondents that although, the writ applicant No.1 was permitted to amend all the nine bills yet, he was able to amend only four bills. According to the department, it is now not permissible for the writ applicant to once again seek permission to amend those five bills which the writ applicant No.1 could have amended at the relevant point of time. In such circumstances referred to above, the writ applicant is here before this Court with the present writ application.

4. We have heard Mr. D.K. Trivedi, the learned counsel appearing for the writ applicants and Mr. Priyank Lodha, the learned Standing Counsel appearing for the respondents.

5. At the outset, Mr. Trivedi, invited the attention of this Court to page 31 of the paper book. The documents at page 31 are the e-mail correspondence between the writ applicant No.1 and the department. In one of the correspondence, the writ

applicant No.1 seems to have informed that it was not getting appropriate feedback with respect to the amendment of the bills and the same was leading to a huge financial loss.

6. As against the aforesaid, Mr. Lodha, immediately invited the attention of this Court to page 30 of the paper book. At page 30, again there is correspondence between the writ applicant and the department wherein the writ applicant No.1 has accepted that there could be a mistake on its part however, the writ applicant No.1 tried to pursued the department to permit him to amend the five invoices.

7. Section 37 of the GST Act is with respect to the furnishing of details of the outward supplies. In accordance with Section 37 of the Act every registered person other than an input service distributor, a non resident taxable person and a person paying tax under the provisions of Section 10, Section 51 or Section 52 respectively, is obliged to furnish electronically in such form and manner the details of the outward supplies of goods or services or both effected during a tax period on or before the tenth day of the month succeeding the said tax period. Such details are to be communicated to the recipient of the said supplies within such time and in such manner that may be prescribed.

8. What is relevant for our purpose is sub section (3) of Section 37, which reads thus:

“37(3) Any registered person, who has furnished the details under sub-section (1) for any tax period and which have remained unmatched under section 42 or section 43, shall, upon discovery of any error or omission therein, rectify such error or omission in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period:

Provided that no rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after furnishing of the return under section 39 for the month of September following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier."

9. We are not getting into the controversy whether there was any mistake on the part of the writ applicant No.1 so far as the GSTR-1 is concerned. The department permitted the writ applicant No.1 to amend the GSTR-1 with respect to all the nine invoices however, for some reason or the other, the writ applicant No.1 was in a position to amend only four such invoices. He is here before this Court as he is not able to amend the remaining five. There is a controversy whether those five invoices could have also been amended in the first instance or not.

10. Be that as it may, in the peculiar facts and circumstances of the case, we are inclined to grant one last opportunity to the writ applicant to get his GSTR-1 with respect to all the five invoices amended for one last time.

11. The Respondents are directed to process the request of the writ applicant No. 1 for carrying out amendment in its GSTR -1 returns pertaining to the respective months in 2019 in all the aforesaid writ petitions with respect to ticking of the 'Deemed Export' column in regard to the balance 5 invoices, which the writ applicant did not amend in the first request, however, the respondents are granted liberty to undertake necessary exercise to verify the same with the recipient as well;

12. The writ applicants shall undertake such exercise as is required post the amendment of the GSTR – 1 with respect to

revised filing of any compliance under the Act; and

13. The Respondents are directed to process the request of the writ applicant for amendment without subjecting it to the restriction given in the proviso to Section 37 (3) of the CGST Act, 2017. Further, in case of any technical difficulty in executing the aforesaid directions, the Respondents including the GSTN Network shall, either make appropriate arrangements in that regard or shall accept the request for amendment of the writ applicant No. 1 in physical form for further process.

14. With the aforesaid, all the three writ applications stand disposed of.

15. Direct service is permitted.

(J. B. PARDIWALA, J)

(NISHA M. THAKORE,J)

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THE HIGH COURT
OF GUJARAT

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